

## LICENSE AGREEMENT FOR UTILITY SPACE AND APPURTENANCES

This License Agreement ("Agreement") made as of the date executed below between the **City of Lincoln, Nebraska**, a municipal corporation ("City") and **Black Hills/Nebraska Gas Utility Company, LLC d/b/a Black Hills Energy**, a foreign limited liability company ("Black Hills Energy").

1. Description of Premises. City grants to Black Hills Energy a license ("License") to occupy and use a certain parcel of real property situated thereon, located at Cooper Park at approximately South 8<sup>th</sup> and D Streets, Lincoln, Lancaster County, Nebraska (the associated ROW and real property are, collectively, the "Property", and the specific portions of the Property to be occupied by Black Hills Energy exclusively are the "Premises"), all as shown on the attached Exhibit A, which is incorporated herein by this reference.

2. Term of Agreement. The term of this Agreement will be for twenty-five (25) years, and will commence upon execution of this Agreement by both parties. The parties agree that this License is irrevocable until this Agreement expires or terminates as provided herein.

3. Use of Premises. The Premises will be used for the purpose of installing, constructing, maintaining, repairing, operating, altering, inspecting, expanding, adding to and removing Black Hills Energy's gas utility equipment, including but not limited to the following:

- (a) Gas-regulating Station;
- (b) Distribution lines and associated appurtenances; and
- (c) A black metal cabinet containing, without limitation, gas regulating equipment and shall be of a design and construction as approved by the Parks Department, such approval not to be unreasonably withheld ("Utility Compound").

For the purposes of this Agreement, all of Black Hills Energy's equipment and necessary appurtenances on the Premises will be referred to herein collectively as the "Utility Facility."

4. Construction; Licenses and Permits. Black Hills Energy shall secure from the proper governmental authorities all licenses and permits required by law for construction, maintenance and operation of the structures and appurtenances before construction of the Utility Facility. Black Hills Energy shall be responsible for all costs with construction, operation, maintenance, and repair of the Utility Facility and on the Premises. All work to be performed on the Premises shall be performed in a good and workmanlike manner, and in accordance with all applicable governmental laws, ordinances, regulations and codes. Any contractor performing work on the Premises shall furnish a payment bond, with corporate surety licensed to do business in the State of Nebraska, in the full amount of the cost of such improvements, showing City as the beneficiary thereon. All such contractors shall carry statutory worker's compensation insurance and liability insurance with limits of not less than One Million Dollars (\$1,000,000).

Black Hills Energy shall submit the building plans to City who shall have fifteen (15) calendar days to accept or reject such plans and deliver such notice to Black Hills Energy in

writing. Should the City fail to respond in writing to Black Hills Energy within such fifteen (15) day period, such plans shall be deemed approved. As soon as reasonably possible after City approves the building plans, Black Hills Energy shall construct and install, at Black Hills Energy's cost, the Utility Facility at the location depicted on Exhibit A, in accordance with the approved plans and specifications shown thereon. Black Hills Energy or its agents or contractors shall be required to install and maintain a black metal cabinet for the Utility Compound and Utility Facility on the Premises. Black Hills Energy may make alterations to the Utility Facility from time to time as Black Hills Energy determines to be necessary or desirable, subject to the approval process described above and the Utility Compound being utilized, which approval will not be unreasonably withheld. Any damage to the Premises caused by the construction, operation and maintenance of the Utility Facility shall be at Black Hills Energy's sole expense.

5. Fees. Black Hills Energy shall pay to City a license fee to occupy and use the Premises ("License Fee"). The License Fee shall be \$200/year, payable upon the execution of this Agreement. The License Fee shall be increased by 10% every five years. Payment shall be made to City Parks and Recreation Department gift trust account for landscape materials and maintenance.

6. Access to City Property; Interference. Black Hills Energy shall have twenty-four (24) hour, seven (7) day a week access to the Premises. City shall maintain all access roadways from the nearest public roadway to the Premises in a manner sufficient to allow vehicular and pedestrian access at all times and to permit Black Hills Energy to operate, maintain and repair the Utility Facility. It is acknowledged that the Utility Facility and appurtenances thereto are constructed on City property which is a vital part of City's operations. City retains the right to use the Property and Premises at any time in connection with the need of City to provide benefits to the public in any ways that do not interfere with Black Hills Energy's uses. City will do so in such a manner so as to not interfere with Black Hills Energy's use of the Premises. Black Hills Energy shall operate their equipment on the licensed Premises in such a manner so that the operation does not interfere with City's current operations on its Property nor will it interfere with access to the Property by City personnel, agents or contractors. Black Hills Energy agrees to comply with any reasonable rules, regulations, and procedures that may be adopted by City from time to time to provide reasonable security measures to protect the Premises and City. Black Hills Energy shall at all times pertinent hereto be responsible for the proper operation of its equipment located on the Premises and shall make certain that the same complies with all pertinent laws, rules and regulations of any applicable governmental authority. In the event that Black Hills Energy's equipment causes substantially unreasonable interference with any of City's equipment that existed prior to the date of this Agreement, Black Hills Energy, upon notice received of the interference, shall take all reasonable steps necessary to correct and eliminate the interference as soon as possible and shall take all necessary precautions and corrective action needed to prevent the reoccurrence of the interference.

7. Taxes. Since the real property is owned and used by a governmental entity (City), it is potentially tax exempt. Black Hills Energy shall be responsible for and pay its portion of taxes attributable to the Utility Facility that shall accrue thereon, as an additional amount to the License Fee, if taxes are subsequently levied against the Utility Facility. Black Hills Energy will be responsible for payment of all Black Hills Energy's personal and real property taxes assessed directly upon and arising solely from its possession or use of the Utility Facility or Premises. Black Hills Energy shall have the right, at its sole option, and at its sole cost and expense, to

appeal, challenge or seek modification of any personal property tax assessment or billing for which it is wholly or partly responsible for payment under this Agreement.

8. Payment of Utilities. Black Hills Energy shall have the right to draw telecommunication, electricity and other utilities from the existing utilities on the Property or obtain separate utility service from any utility company that will provide service to the Premises (including a standby power generator for Black Hills Energy's exclusive use). Black Hills Energy shall fully and promptly pay for all utility service of every kind furnished to the licensed Premises throughout the License term. City shall not be liable for any damage to equipment or loss of revenue to Black Hills Energy resulting from the interruption of utility services unless due to the negligent or intentional acts of City. All License Fees due under this Agreement shall continue notwithstanding any interruption of power or other required utility facilities, except for the willful act or negligence of City.

9. Maintenance of Licensed Premises. Black Hills Energy shall, throughout the term of this Agreement, at its own cost and expense, keep and maintain the Utility Facility and all appurtenances thereto including all constructed improvements in good, sanitary, working order, condition and repair, excluding any of City's property and equipment on the Premises. City may require the Utility Facility to be screened with reasonable landscaping. Any landscaping of the Premises, due to installation of Black Hills Energy's Utility Facility, required by City of Lincoln or any other appropriate governmental authority shall be done at the sole cost and expense of Black Hills Energy, including all necessary maintenance. Neither Black Hills Energy nor any other party shall be allowed to display any signage or advertisement on the Utility Facility, on any structure within or on the Premises, except as required by law. Black Hills Energy shall take all reasonable necessary measures and precautions to prevent unauthorized persons access to the Premises.

10. Liability. City shall not be liable for damage to Black Hills Energy's improvements or for any loss or damage to any vehicles parked upon the licensed Premises, except for the negligent or willful act of City. Black Hills Energy shall at all times during the term of this Agreement and License keep in full force and effect, a commercial general liability policy with Two Million Dollars (\$2,000,000.00) combined single limit coverage for bodily injury and property damage, naming City as an additional insured on such policy. City may adjust the required amounts of such insurance during the term of the Agreement in conjunction with changes in the amounts recoverable under state law but in no event in an amount greater than five million dollars (\$5,000,000.00) without the agreement of Black Hills Energy. Black Hills Energy shall furnish City with a certificate of such insurance policy which shall provide such insurance policy shall not be canceled without providing commercially reasonable written notice of such cancellation.

11. Indemnification. To the fullest extent permitted by law, Black Hills Energy shall indemnify and hold harmless City, its officers, agents and employees from and against claims, damages, losses and expenses, including but not limited to reasonable attorneys' fees, arising out of or resulting from Black Hills Energy's use and occupation of the Premises, that results in any claim for damage whatsoever, including without limitation, any bodily injury, sickness, disease, death, or any injury to or destruction of tangible or intangible property, including any loss of use resulting therefrom that is caused in whole or in part by Black Hills Energy or anyone directly or indirectly employed by Black Hills Energy, or anyone for whose acts any of them may be liable.

This section shall not require Black Hills Energy to indemnify or hold harmless City for any losses, claims, damages, and expenses arising out of or resulting from the negligence of City. Nothing in this section shall require either party to indemnify the other party against such other party's own willful or negligent misconduct.

12. Assignment, Renting or Leasing Space. Black Hills Energy shall have the right to sublicense or assign its rights under this License to any party affiliated, under common control or otherwise related to Black Hills Energy, successor legal entities or any party acquiring substantially all the assets of Black Hills Energy (the "Control Group") without the consent of City. Notwithstanding anything to the contrary contained in this Agreement, Black Hills Energy may assign, mortgage, pledge, hypothecate or otherwise transfer without consent its interest in this Agreement to any financing entity, or agent on behalf of any financing entity to whom Black Hills Energy (a) has obligations for borrowed money or in respect of guaranties thereof, (b) has obligations evidenced by bonds, debentures, notes or similar instruments, or (c) has obligations under or with respect to letters of credit, bankers acceptances and similar facilities or in respect of guaranties thereof.

13. Termination. Either party has the right to terminate this Agreement if the other party fails to perform or observe any of the material provisions of this Agreement. Termination rights under this section may be exercised only after the non-breaching party notifies the breaching party in writing upon which the breaching party shall have thirty (30) days to cure the material defect. This includes but is not limited to: (a) Black Hills Energy fails to make punctual payment of the License Fee; (b) Black Hills Energy does not obtain all permits or other approvals required from any governmental authority or any easements required from any third party to operate the Utility Facility, or if any such approval is canceled, expires or is withdrawn or terminated; (c) City fails to have proper ownership of the Premises or authority to enter into this Agreement; or (d) Black Hills Energy fails to maintain the Premises and Utility Facility as required herein. Upon termination, all prepaid rent will be retained by City unless such termination is due to City's failure of proper ownership or authority, or such termination is a result of City's default. Additionally, upon termination or expiration without renewal Black Hills Energy must remove its equipment within ninety (90) days after the expiration of this Agreement. Failure to so remove the equipment will, at City's option: (a) result in the same being owned by City; or (b) result in the same being removed by City at Black Hills Energy's cost. City also has the right to terminate this Agreement for any reason for its own convenience with thirty (30) days written notice of the termination.

14. Environmental Laws. Black Hills Energy warrants and agrees that it will conduct its activities on the Premises in compliance with all applicable environmental laws. City represents, warrants, and agrees that it has in the past and will in the future conduct its activities on the Premises in compliance with all applicable environmental laws and that the Premises are free of hazardous substance as of the date of this Agreement.

City shall be responsible for, and shall promptly conduct any investigation and remediation as required by any applicable law, of all spills or other releases of hazardous substance, that have occurred or which may occur on the property caused or attributable to the actions of the City. To the extent permitted by Nebraska law, City agrees to defend, indemnify and hold Black Hills Energy harmless from and against any and all claims, causes of action, demands and liability including, but not limited to, damages, costs, expenses, assessments,

penalties, fines, losses, judgments and attorneys' fees that Black Hills Energy may suffer due to the existence or discovery of any hazardous substance on the Premises or the migration of any hazardous substance to other properties or release into the environment arising not otherwise directly attributable to Black Hills Energy's activities on the Premises; and/or arising from any breach of any representation, warranty or agreement contained in this section.

Black Hills Energy agrees to defend, indemnify and hold City harmless from and against any and all claims, causes of action, demands and liability including, but not limited to, damages, costs, expenses, assessments, penalties, fines, losses, judgments and attorneys' fees that City may suffer due to the existence or discovery of any hazardous substance on the Premises or the migration of any hazardous substance to other properties or release into the environment directly attributable to Black Hills Energy's activities on the Property or Premises.

The indemnification in this section specifically includes without limitation costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any governmental authority.

15. Nebraska Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Nebraska and any legal action brought in respect thereto shall be brought either in the state courts of the State of Nebraska located in Lincoln, Nebraska, or if applicable, in the United States District Court located in Lincoln, Nebraska.

16. Binding Effect. This Agreement shall inure to the benefit and be binding upon Black Hills Energy, its successors or assigns.

17. Additional Licenses. Black Hills Energy acknowledges the right and authority of City to grant and lease or license additional licenses for telecommunication or utility equipment and appurtenances thereto of other users on the City's property so long as such grant and lease or license does not interfere with Black Hills Energy's use of the Premises.

18. Entire License Agreement. This Agreement contains the entire understanding of the parties hereto with respect to the conditions of this License and supersedes all prior agreements and understandings between the parties with respect to such subject matter. The representations, warranties, undertakings, or promises, whether oral, implied, written, or otherwise, have been made by either party hereto to the other unless expressly stated in this Agreement or unless mutually agreed to in writing between the parties hereto after the date hereto, and neither party has relied on any verbal representation, agreements, or undertakings not expressly set forth herein.

19. Notices. All notices, requests, License Fee payments, demands and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested, or sent by overnight carrier, to the following addresses:

City:	City of Lincoln Parks and Recreation Department
	2740 A Street
	Lincoln, NE, 68502

Black Hills Energy: Black Hills Energy  
1600 Windhoek Drive  
Lincoln, NE 68512

A party may change its address to which any notice or demand may be given by written notice thereof to the other party.

20. Contingencies. This Agreement and Black Hills Energy's obligations hereunder are expressly contingent upon the following: (a) Black Hills Energy's satisfaction with the status of title to the Premises; and (b) Black Hills Energy's satisfaction, within the first year of the Agreement, in its sole and absolute discretion, with the feasibility of engineering, installing, constructing and operating the Utility Facility; and Black Hills Energy's receipt of all necessary or appropriate building and construction permits and all licenses, permits, approvals and consents from all applicable governmental authorities necessary or appropriate for Black Hills Energy to use and operate the Utility Facility on the Premise. Black Hills Energy is hereby given the right to survey, soil test, radio coverage test, and to conduct any other investigations needed to determine if the location of the Premises is suitable for Black Hills Energy's use intended by this Agreement.

21. Waiver of City's Lien. City waives any lien rights it may have concerning the Utility Facility which is deemed Black Hills Energy's personal property and not fixtures, and Black Hills Energy has the right to remove the same at any time without City's consent.

22. Miscellaneous.

(a) If any provision of this Agreement is invalid or unenforceable with respect to any party, the remainder of this Agreement or the application of such provision to persons other than those as to whom it is held invalid or unenforceable, shall not be affected and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

(b) City acknowledges that a Memorandum of Agreement may be recorded by Black Hills Energy in the official records of the County where the Premises are located. City agrees to sign all necessary and appropriate documents to facilitate the filing of the Memorandum of Agreement. In the event the Premises are encumbered by a mortgage or deed of trust, City agrees to obtain and furnish to Black Hills Energy a non-disturbance and attornment instrument for each such mortgage or deed of trust.

(c) In any case where the approval or consent of one party hereto is required, requested or otherwise to be given under this Agreement, such party shall not unreasonably condition, delay or withhold its approval or consent.

(d) This Agreement may be executed in duplicate counterparts, each of which shall be deemed an original.

(e) This Agreement represents the entire agreement between the parties and all prior negotiations and representations are hereby expressly excluded from this Agreement. This Agreement may be amended only by written agreement of both parties.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written. The undersigned do hereby agree and represent that he or she is legally capable to sign this Agreement and to lawfully bind the party to this Agreement.

**CITY OF LINCOLN, NEBRASKA**

By: \_\_\_\_\_  
Mayor Chris Beutler

Date: \_\_\_\_\_

**BLACK HILLS/NEBRASKA GAS UTILITY COMPANY, LLC**

By: Don Nordell

Date: 2/19/15

Title: Director, Business Operations

STATE OF NEBRASKA                    )  
  ) ss.  
COUNTY OF LANCASTER            )

On this \_\_\_\_ day of \_\_\_\_\_, 2015, before me a Notary Public in and for said county and state, personally came Mayor Chris Beutler, on behalf of City of Lincoln, to me personally known to be the identical person whose name is affixed to the above Agreement and acknowledged execution of the same to be his voluntary act and deed.

WITNESS my hand and Notarial Seal the day and year last above written.

\_\_\_\_\_  
Notary Public

STATE OF Nebraska                    )  
  ) ss.  
COUNTY OF Lancaster            )

On this 19<sup>th</sup> day of February 2015, before me a Notary Public in and for said county and state, personally came Don Nordell, on behalf of Black Hills/Nebraska Gas Utility Company, LLC, to me personally known to be the identical person whose name is affixed to the above Agreement and acknowledged execution of the same to be his voluntary act and deed.

WITNESS my hand and Notarial Seal the day and year last above written.

Gabriel Wayne Tramp  
Notary Public

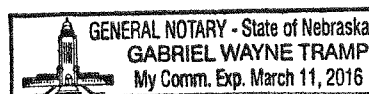








EXHIBIT "A"

# Official Survey Record

Lancaster County, Nebraska

Phone (402) 434-2686  
Fax (866) 215-8747

ALLIED SURVEYING AND MAPPING

8535 Executive Woods Drive - Suite 200 - Lincoln, Nebraska 68512

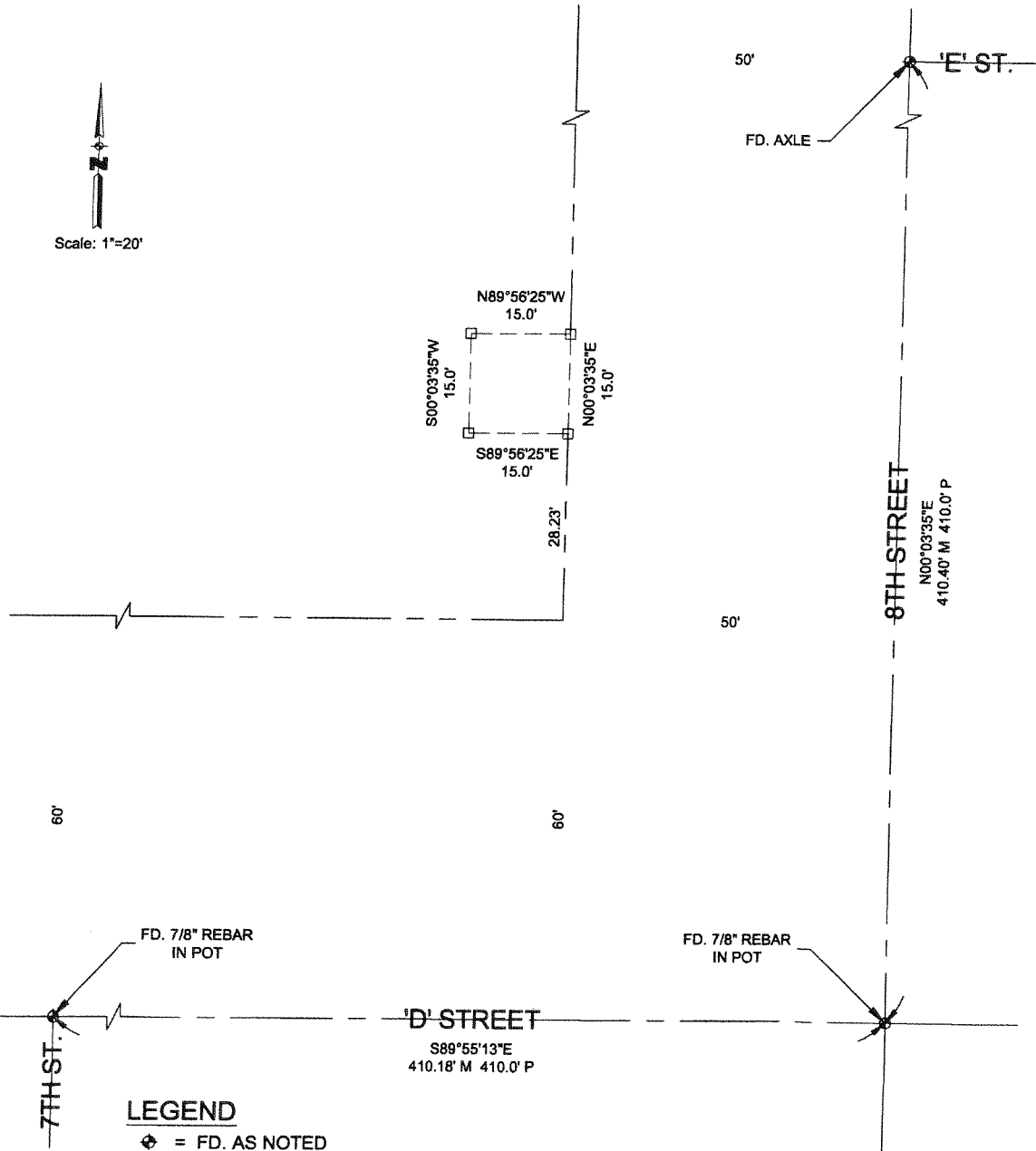
Survey of 225 sq. ft. easement,

located in the Southeast Quarter

Of Section 26 T. 10N. R. 6E. of the 6th P.M.

Job No. 2014-0210

August 2014



## LEGEND

- ⊕ = FD. AS NOTED
- = SET WOODEN HUB

## SURVEYORS CERTIFICATE

I hereby certify that I have accurately surveyed the property in the above plat. Capped rebar were set at points marked "o". All dimensions are in feet or decimals of a foot.

Signed this 6th day of August, 2014.

NAME

MARC

Surveyor's License #  
Nebraska L.S.



Legal description of a 225 sq.ft. easement located in the Southeast Quarter of Section 26, Township 10 North, Range 6 East of the Sixth P.M., Lincoln, Lancaster County Nebraska and more particularly described as follows:

**Referring** to the Southeast corner of the City Park as originally laid out in said Section 26, said point being 60.0' North of and 50.0' West of the intersection of "D" and 8<sup>th</sup> Streets; Thence North on the West 50.0' Right-of-Way line of 8<sup>th</sup> Street on an assumed bearing of N 00°03'35" E for a distance of 28.23' to the **Point of Beginning**; Thence continuing on the last described course of N 00°03'35" E for a distance of 15.00'; Thence N 89°56'25" W for a distance of 15.00'; Thence S 00°03'35" W for a distance of 15.00'; Thence S 89°56'25" E for a distance of 15.00' to the **Point of beginning**.